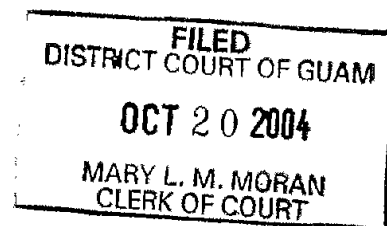


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IN THE DISTRICT COURT OF GUAM

ALAN SADHWANI, LAJU  
 SADHWANI, and K. SADHWANI'S  
 INC., a Guam corporation,

Plaintiffs,

v.

HONGKONG AND SHANGHAI  
 BANKING CORPORATION, LTD.,  
 et al,

Defendants.

CIVIL CASE NO. 03-00036

**ANSWER AND COUNTERCLAIM  
 OF HSBC TO THIRD AMENDED  
 COMPLAINT FOR DAMAGES**

COMES NOW Defendant The Hongkong and Shanghai Banking Corporation Limited ("HSBC") to file its Answer and Counterclaim to the Third Amended Complaint for Damages filed herein on August 16, 2004 ("Complaint") by Plaintiffs, pursuant to Rules 12(a) and 15(a) of the Federal Rules of Civil Procedure, as follows:

1. Paragraph 1 of the Complaint is admitted.

Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 2 of 23 pages

2. HSBC is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in the first two sentences of paragraph 2 of the Complaint related to Plaintiffs and, on that basis, denies each such allegation contained in such sentences. The remainder of paragraph 2 of the Complaint is denied, except it is admitted that HSBC is a foreign corporation licensed to do business in Guam.

3. HSBC is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint and, on that basis, denies each allegation contained in such paragraph.

4. HSBC is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in the first two sentences of paragraph 4 of the Complaint and, on that basis, denies each allegation contained therein. Each and every remaining allegation in paragraph 4 is denied, except it is admitted that HSBC has been in the business of providing limited banking services in Guam.

5. HSBC is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint and, on that basis, denies each allegation contained in such paragraph.

6. In response to paragraph 6 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

Sadhwani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 3 of 23 pages

7. In response to paragraph 7 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

8. In response to paragraph 8 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

9. In response to paragraph 9 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

10. In response to the first sentence in paragraph of the Complaint, each allegation is denied, except HSBC admits that one or more representatives may have met with Alan Sadhwani on or about such date. In response to second sentence in paragraph 10 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

11. Each and every allegation contained in the first two sentences of paragraph 11 of the Complaint is denied, however, HSBC admits that its representatives met with one or

Sadhwani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 4 of 23 pages

more Plaintiffs in 2003. The third sentence of paragraph 11 of the Complaint is denied. In response to the fourth sentence in paragraph 11 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such sentence is denied.

12. In response to paragraph 12 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

13. In response to paragraph 13 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

14. In response to paragraph 14 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

15. In response to paragraph 15 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained

Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 5 of 23 pages

in such paragraph is denied.

16. Each and every allegation contained in the first two sentences of paragraph 16 of the Complaint is denied. In response to the third sentence in paragraph 16 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such sentence is denied.

17. In response to paragraph 17 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

18. In response to paragraph 18 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

19. Each and every allegation in paragraph 19 of the Complaint is denied, except it is admitted that in 2003 HSBC negotiated with and attempted to sell the subject note and loan and other loans to several prospective buyers.

20. In response to the first sentence in paragraph 20 of the Complaint, the writing referred to in such sentence is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every

Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 6 of 23 pages

allegation contained in such sentence is denied. With regard to the second sentence of paragraph 20, HSBC is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in such sentence and, on that basis, denies each allegation contained in such sentence.

21. HSBC admits the allegations contained in paragraph 21 of the Complaint.

22. In response to the first sentence in paragraph 22 of the Complaint, the writing referred to in such sentence is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such sentence is denied. Each and every remaining allegation contained in paragraph 22 of the Complaint is denied.

23. With regard to paragraph 23 of the Complaint, HSBC is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in such paragraph and, on that basis, denies each allegation contained in such paragraph, except it is denied that a "workout agreement" existed.

24. Each and every allegation contained in the first sentence of paragraph 24 of the Complaint is denied and HSBC specifically denies that the referenced letter from First Hawaiian Bank contained a commitment to Plaintiffs for a loan or financing. With regard to the second sentence of paragraph 19 of the Complaint, HSBC admits that sometime in early August, 2003, one of the Plaintiffs provided HSBC with a copy of the referenced letter from First Hawaiian Bank.

Sadhwani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 7 of 23 pages

25. In response to paragraph 25 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

26. HSBC is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint and, on that basis, denies each allegation contained in such paragraph, except it is admitted that HSBC refused to provide Plaintiffs with a copy of the referenced note purchase agreement, refused to divulge the purchase price, and that the purchase price is as specified in the subject loan purchase agreement.

27. Each and every allegation contained in paragraph 27 of the Complaint is denied.

28. HSBC is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in the first five sentences of paragraph 28 of the Complaint and, on that basis, denies each allegation contained in such sentences. Each and every remaining allegation contained in paragraph 28 of the Complaint is denied, except it is admitted that HSBC sold the subject note to PMC in accordance with the terms and conditions in a note purchase agreement.

#### **ANSWER TO FIRST CAUSE OF ACTION**

29. In response to paragraph 29 of the Complaint, HSBC incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 28 of the Complaint.

Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 8 of 23 pages

30. Each and every allegation contained in paragraph 30 of the Complaint is denied, except it is admitted that each party to a contract has an implied duty to act in good faith.

31. In response to paragraph 31 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

32. Each and every allegation contained in paragraph 32 of the Complaint is denied, except HSBC is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in the last sentence of paragraph 32 of the Complaint and, on that basis, denies each allegation contained in such sentence.

33. Each and every allegation contained in paragraph 33 of the Complaint is denied.

34. Each and every allegation contained in paragraph 34 of the Complaint, and each of its subparts, is denied.

35. Each and every allegation contained in paragraph 35 of the Complaint is denied.

#### **ANSWER TO SECOND CAUSE OF ACTION**

36. In response to paragraph 36 of the Complaint, HSBC incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 35 of the Complaint.

37. Each and every allegation contained in paragraphs 37, 38, 39, 40, 41 and 42 of the Complaint is denied.

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Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 9 of 23 pages

### **ANSWER TO THIRD CAUSE OF ACTION**

38. With regard to paragraphs 43, 44, 45 and 46 of the Complaint, the Court's Order of October 4, 2004, dismissed the Third Cause of Action and these paragraphs and no response on the part of HSBC is necessary.

### **ANSWER TO FOURTH CAUSE OF ACTION**

39. In response to paragraph 47 of the Complaint, HSBC incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 46 of the Complaint.

40. In response to paragraph 48 of the Complaint, the writing referred to in such paragraph is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such paragraph is denied.

41. Each and every allegation contained in paragraph 49 of the Complaint is denied.

42. In response to the first sentence of paragraph 50 of the Complaint, the writing referred to in such sentence is a written document which speaks for itself and no response on the part of HSBC is necessary. To the extent that any response is necessary, each and every allegation contained in such sentence is denied. Each and every remaining allegation contained in paragraph 50 of the Complaint is denied.

43. Each and every allegation contained in paragraphs 51 and 52 of the Complaint is denied.

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Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 10 of 23 pages

### **ANSWER TO FIFTH CAUSE OF ACTION**

44. In response to paragraph 53 of the Complaint, HSBC incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 52 of the Complaint.

45. Each and every allegation contained in paragraphs 54, 55, and 56 of the Complaint is denied.

### **ANSWER TO SIXTH CAUSE OF ACTION**

46. In response to paragraph 57 of the Complaint, HSBC incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 56 of the Complaint.

47. Each and every allegation contained in paragraph 58 of the Complaint is denied.

48. Each and every allegation contained in paragraph 59 of the Complaint, and each of its subparts, is denied.

49. Each and every allegation contained in paragraph 60 of the Complaint is denied.

### **ANSWER TO SEVENTH CAUSE OF ACTION**

50. In response to paragraph 61 of the Complaint, HSBC incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 60 of the Complaint.

51. Each and every allegation contained in paragraph 62 of the Complaint is denied, except it is admitted that Plaintiffs were borrowers with HSBC and that HSBC received financial information from the Plaintiffs.

52. In response to paragraph 63 of the Complaint, HSBC admits that Paradise Marine Corporation purchased the subject note(s) and indebtedness of Plaintiffs, however, with regard

Sadhwani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 11 of 23 pages

to the remaining allegations contained in paragraph 63, HSBC is without sufficient information or knowledge to form a belief as to the truth of such allegations and, on that basis, denies each remaining allegation contained in such paragraph.

53. HSBC is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 64 of the Complaint and, on that basis, denies each allegation contained in such paragraph.

54. Each and every allegation contained in paragraph 65 of the Complaint is denied.

55. Each and every allegation contained in paragraph 66 of the Complaint is denied, except it is admitted that in the course of attempting to sell the subject note and others HSBC provided limited loan information to prospective buyers after they signed an agreement which required, among other things, that such parties keep all such information confidential and not disclose it to other parties.

56. Each and every allegation contained in paragraph 67 of the Complaint is denied.

#### **ANSWER TO EIGHTH CAUSE OF ACTION**

57. In response to paragraph 68 of the Complaint, HSBC incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 67 of the Complaint.

58. Each and every allegation contained in paragraph 69 of the Complaint is denied

59. Each and every allegation contained in the Complaint not specifically admitted herein is denied.

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Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 12 of 23 pages

### **AFFIRMATIVE DEFENSES**

60. By alleging the matters set forth below under this heading "Affirmative Defenses," HSBC does not thereby allege, admit, concede, or imply that HSBC has the burden of proof with respect to all or any part of any such matters.

#### **FIRST AFFIRMATIVE DEFENSE**

61. The Complaint, and each purported cause of action therein, fails to state a cause of action against HSBC upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

62. Plaintiffs breached the subject agreements and are, therefore, barred from the relief requested in the Complaint including, but not limited to, attorneys fees.

#### **THIRD AFFIRMATIVE DEFENSE**

63. HSBC has fully performed any and all duties and obligations required to be performed by it and has satisfied any and all conditions required to be satisfied by it pursuant to the terms of any and all agreements with Plaintiffs, except such duties, obligations, and conditions the performance or satisfaction of which was waived or excused by Plaintiffs.

#### **FOURTH AFFIRMATIVE DEFENSE**

64. Plaintiffs are estopped by their conduct from claiming that HSBC is in any way at fault as alleged in the Complaint.

#### **FIFTH AFFIRMATIVE DEFENSE**

65. If there has been any event entitling Plaintiffs to relief against HSBC as pleaded

Sadhwani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 13 of 23 pages

in the Complaint, which HSBC denies, Plaintiffs have, by reason of their conduct and/or by reason of the provisions of the alleged agreements between the parties, waived any claims against HSBC that they might otherwise have.

#### **SIXTH AFFIRMATIVE DEFENSE**

66. Plaintiffs are barred from obtaining any relief as pleaded in the Complaint by the doctrine of unclean hands.

#### **SEVENTH AFFIRMATIVE DEFENSE**

67. Plaintiffs could not perform their obligations under the various loan agreements with HSBC and, therefore, were the cause of any damages they suffered.

#### **EIGHTH AFFIRMATIVE DEFENSE**

68. Plaintiffs are barred from obtaining any relief as pleaded in the Complaint because of Plaintiffs' failure to take reasonable, necessary, appropriate, and feasible steps to mitigate their damages, if any.

#### **NINTH AFFIRMATIVE DEFENSE**

69. Plaintiffs are barred from obtaining any relief as pleaded in the Complaint because of the nonperformance by Plaintiffs of a condition or conditions precedent.

#### **TENTH AFFIRMATIVE DEFENSE**

70. HSBC did not breach any of the terms and conditions of the alleged agreements as pleaded in the Complaint.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

Sadhwani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 14 of 23 pages

71. No valid and enforceable "workout agreement" existed between Plaintiffs and HSBC, as pleaded in the Complaint.

**TWELFTH AFFIRMATIVE DEFENSE**

72. Plaintiffs are not entitled to any damages under the causes of action pled in the Complaint and, therefore, the Complaint must be dismissed in its entirety.

**THIRTEENTH AFFIRMATIVE DEFENSE**

73. Plaintiffs are barred from obtaining any relief as pleaded in the Complaint because of the doctrine of preemption under applicable Federal law.

**FOURTEENTH AFFIRMATIVE DEFENSE**

74. Any recovery by Plaintiffs by way of the Complaint does not satisfy the standard for recovery by Plaintiffs of attorneys fees and costs and the same must be denied.

**FIFTEENTH AFFIRMATIVE DEFENSE**

75. Any alleged conduct of HSBC does not satisfy the standard for recovery by Plaintiffs of punitive or exemplary damages.

**SIXTEENTH AFFIRMATIVE DEFENSE**

76. All or part of any award of punitive or exemplary damages against HSBC would violate HSBC's rights under the Fourteenth Amendment to the United States Constitution and Section 5(u) of the Guam Organic Act, codified as amended at 48 U.S.C. § 1421b(u).

**SEVENTEENTH AFFIRMATIVE DEFENSE**

77. If any injury or damage occurred as alleged in the Complaint, which HSBC

Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 15 of 23 pages

denies, such injury or damage was caused or contributed to, in whole or in part, by the actions, omissions, or fault of Plaintiffs or parties other than HSBC.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

78. Plaintiffs have failed to state a claim for special damages, pursuant to Rule 9(g) of the Federal Rules of Civil Procedure, upon which relief can be granted.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

79. Plaintiffs are barred from obtaining any relief on their causes of action in the Complaint for breach of contract because Plaintiffs have defaulted on their contractual obligations to HSBC.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

80. HSBC owed no fiduciary duty to Plaintiffs.

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

81. In its sale of Plaintiffs' note and indebtedness to Paradise Marine Corporation, HSBC did not breach or violate any banking or "confidentiality" laws or any implied duty of confidentiality allegedly owed by HSBC to Plaintiffs.

#### **TWENTY-SECOND AFFIRMATIVE DEFENSE**

82. The note and indebtedness of Plaintiffs consisted of negotiable instruments which may be freely sold or traded.

#### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

83. Plaintiffs are barred from obtaining any relief on their causes of action in the

Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 16 of 23 pages

Complaint because Plaintiffs have breached and violated their implied duty of good faith and fair dealing in the performance of the alleged agreements.

#### **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

84. Plaintiffs' claims as alleged in the Complaint are barred, in whole or in part, by the doctrine of equitable estoppel.

#### **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

85. The damages allegedly suffered by Plaintiffs, if any, were not caused by any action or inaction on the part of HSBC.

#### **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

86. HSBC's actions with respect to Plaintiffs were at all times taken in the good faith exercise of HSBC's reasonable business judgment, were motivated by HSBC's assessment of its own reasonable business interest, and were taken for valid business reasons.

#### **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

87. On or before the dates the causes of action arose, as alleged in the Complaint, Plaintiffs were in default of the alleged agreements, were insolvent, or were failing to pay their debts as they became due.

#### **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

88. Plaintiffs' alleged damages, if any, are the result, in whole or in part, of Plaintiffs' own negligence in the manner in which they conducted their business affairs with others who are not parties to this action.



Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 17 of 23 pages

### **TWENTY-NINTH AFFIRMATIVE DEFENSE**

89. In the event HSBC is held liable to Plaintiffs for damages, which HSBC specifically denies, those such damages should be reduced by the amount attributable to Plaintiffs' comparative or relative fault.

### **THIRTIETH AFFIRMATIVE DEFENSE**

90. To the extent that HSBC is found to have breached any of its contractual obligations to the Plaintiffs, such breach is excused and/or justified by the Plaintiffs' prior material breaches of their contractual obligations to HSBC.

### **THIRTY-FIRST AFFIRMATIVE DEFENSE**

91. Plaintiffs have sustained no legally cognizable damage by virtue of any matter alleged in the Complaint, and no damage alleged by Plaintiffs was proximately caused by any conduct of HSBC.

### **THIRTY-SECOND AFFIRMATIVE DEFENSE**

92. Plaintiffs have failed to state a claim for tortious breach of the covenant of good faith and fair dealing since no special relationship arose between the parties.

### **THIRTY-THIRD AFFIRMATIVE DEFENSE**

93. HSBC made no material factual misrepresentation to Plaintiffs which Plaintiffs justifiably relied upon.

### **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

94. Plaintiffs have waived any right to a jury trial they may have had and their demand

Sadhwani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 18 of 23 pages

for a jury trial must be stricken.

### **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

95. HSBC is not liable to Plaintiffs for any alleged breach of fiduciary duty because HSBC's acts as alleged in the Complaint did not exercise undue influence and/or control over Plaintiffs nor did Plaintiffs justifiably place any special trust or confidence in HSBC by reason of the relationship between the parties.

### **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

96. HSBC is not liable to Plaintiffs for any alleged breach of fiduciary duty because Plaintiffs had no right to rely upon HSBC to protect their interests.

### **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

97. Plaintiffs have failed to state a claim for breach of fiduciary duty based on the fact that HSBC neither accepted nor recognized such fiduciary duty.

### **COUNTERCLAIM**

98. This is an action over which the District Court of Guam has original jurisdiction and, pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over this counterclaim.

99. This District is the proper venue for this counterclaim pursuant to 28 U.S.C. § 1391.

100. On information and belief, Plaintiffs Alan Sadhwani and Laju Sadhwani were, at all times mentioned herein, residents of Guam. On information and belief, Plaintiff K.

Sadhwani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 19 of 23 pages

Sadhwani's Inc., at all times mentioned herein, was a Guam corporation with its principal place of business in Guam.

101. At all times mentioned herein, HSBC was and is a foreign corporation duly authorized to transact business in Guam.

102. HSBC has previously extended loans and credit facilities to Plaintiffs in various amounts which were documented in notes, guarantees, security agreements, mortgages, and loan agreements, among others. Under the terms of the loans extended to Plaintiffs, in the event of any dispute or litigation arising out of or related to any such indebtedness, the prevailing party in such litigation is entitled to its reasonable attorney's fees and costs.

#### **COUNT ONE - ATTORNEY'S FEES**

103. HSBC realleges and incorporates by reference the allegations contained in paragraphs 98 through 102 above as if fully set forth herein.

104. In defending against the Complaint herein, and in bringing this Counterclaim, HSBC has incurred, and will continue to incur for the duration of this litigation, reasonable attorney's fees and costs in an amount to be proven at trial. HSBC is entitled to recover against Plaintiffs all of its incurred attorney's fees and costs.

#### **COUNT TWO - DECLARATORY JUDGMENT**

105. HSBC realleges and incorporates by reference the allegations contained in paragraphs 98 through 102 above as if fully set forth herein.

106. This is an action for declaratory judgment for the purpose of determining an

Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 20 of 23 pages

actual, justiciable controversy between the parties in which HSBC is entitled to have a declaration of its rights and further relief, as more fully appears below.

107. Plaintiffs have alleged that a “workout agreement” existed between themselves and HSBC which arose by reason of their purported acceptance of certain proposals contained in a certain letter dated March 21, 2003, from HSBC. HSBC has denied the existence of any such “workout agreement”.

108. Plaintiffs were well aware of the form and substance of a “workout agreement” required by HSBC since they were parties to just such an agreement in May, 2001. Attached hereto as Exhibit “1” and incorporated by this reference is a copy of a Workout Agreement entered in between the parties dated May 31, 2001. Accordingly, Plaintiffs knew or reasonably should have known that there was no “workout agreement” between the parties in 2003.

109. An actual controversy exists between HSBC and Plaintiffs as to the existence of a “workout agreement” and their respective rights and duties, if any, under the same. A judicial declaration is appropriate under the circumstances to determine the inconsistent claims of the parties.

### **COUNT THREE - BREACH OF CONTRACT**

110. HSBC realleges and incorporates by reference the allegations contained in paragraphs 98 through 109 above as if fully set forth herein.

111. On December 29, 1997 Plaintiff K. Sadhwani's Inc. and HSBC executed a “Renewal and Amendment of Credit Facilities” (“Facilities Letter”), a copy of which is attached

Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 21 of 23 pages

to the Complaint as Exhibit "A". In accordance with the Facilities Letter, HSBC and Plaintiffs executed a Business Loan Agreement ("BLA") on December 31, 1997, a copy of which is attached to the Complaint as Exhibit "B".

112. HSBC has fulfilled and complied with all its obligation and duties under the Facilities Letter and the BLA.

113. Plaintiffs breached the Facilities Letter and the BLA in numerous ways including, but not limited to, failing to maintain the required net worth, failing to maintain the required net worth ratio, failing to maintain the required gearing ratio, failing to maintain the required debt-to-equity ratio, entering into financial commitments without HSBC's prior written consent, failing to provide HSBC with timely audited financial statements, failing to provide HSBC with timely interim financial statements, and failing to provide HSBC with timely detailed inventory reports.

114. As a proximate result of Plaintiffs' breach of contract, HSBC has suffered damages in an amount to be proven at trial.

**COUNT FOUR - BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

115. HSBC realleges and incorporates by reference the allegations contained in paragraphs 98 through 114 above as if fully set forth herein.

116. Plaintiffs, as borrowers and signatories to various loan agreements including, but not limited to, the BLA, the Promissory Note dated December 31, 1997, the November 6, 2002,

Sadhwani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 22 of 23 pages

Amendment to Credit Facility/Lease, and the Promissory Note Modification Agreement dated March 5, 2003, had a duty to deal fairly and in good faith with HSBC in meeting the contractual obligations to which they had willingly agreed.

117. Plaintiffs breached their duty of good faith and fair dealing in a multitude of ways including, but not limited to, the following acts and omissions:

- a. Plaintiffs failed to maintain their properties which secured their loans so as to sustain their value and failed to take all steps necessary to preserve their value;
- b. Plaintiffs undertook no serious efforts to obtain refinancing for their properties or to find buyers for their properties, deliberately demanding exorbitant prices in light of the commercial real estate market then existing; and
- c. Plaintiffs claimed that there was a "workout agreement" knowing that none existed.

117. Plaintiffs' failure and refusal to deal fairly and in good faith with HSBC in connection with their loan obligations caused HSBC to sell the subject promissory Note at a loss in excess of Four Million Dollars (\$4,000,000.00) and sustain damages in such amount.

WHEREFORE, HSBC prays as follows:

1. That the Complaint of Plaintiffs be dismissed with prejudice and that Plaintiffs take nothing thereby;
2. That, pursuant to Count One of the Counterclaim, HSBC recover from Plaintiffs its reasonable attorneys fees and costs incurred by HSBC in defending against the Complaint

Sadhvani, et al. v. Hongkong and Shanghai Banking Corporation Ltd., et al.  
Civil Case No. 03-00036  
Answer and Counterclaim of HSBC to Third Amended Complaint for Damages  
Page 23 of 23 pages

and in prosecuting its Counterclaim in this matter in an amount to be proven at trial;

3. That, pursuant to Count Two of the Counterclaim, that this Court declare that no "workout agreement" existed between HSBC and the Plaintiffs as alleged in the Complaint;

4. That, pursuant to Count Three of the Counterclaim, HSBC recover from Plaintiffs its damages in an amount to be proven at trial;

5. That, pursuant to Count Four of the Counterclaim, HSBC recover from Plaintiffs its damages in an amount in excess of \$4,000,000.00;

6. For contractual and statutory pre- and post-judgment interest which shall apply on any and all unpaid amounts due to HSBC; and

7. That HSBC recover such other and further relief as this Court deems just and proper even though not requested herein.

Dated this 19<sup>th</sup> day of October, 2004.

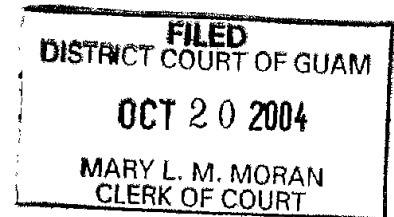
LAW OFFICES OF RICHARD A. PIPES  
Attorneys for Defendant The Hongkong and Shanghai  
Banking Corporation Ltd.

By: \_\_\_\_\_

RICHARD A. PIPES

RAP/nsh

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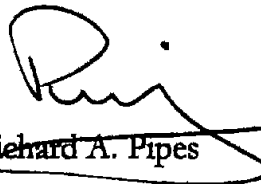
## FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: (671)473-9152

To: Mary L. M. Moran, Clerk of Court  
 Of: District Court of Guam  
 From: Richard A. Pipes  
 Client/Matter: *Sadhvani, et al. v. HSBC, Civil Case No. 03-00036*  
 Date: October 19, 2004

DOCUMENTS	NUMBER OF PAGES*
Answer and Counterclaim of HSBC to Third Amended Complaint	24

COMMENTS: I understand that the Clerk's Office is closed this afternoon because of the approaching typhoon. The enclosed Answer is due to be filed today. We are faxing the Answer to you today and will present the original to the Court tomorrow for filing, if the Clerk's Office is open. Your assistance is most appreciated. Should you have any questions, please contact me.

  
 Richard A. Pipes

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